December 14, 2007
DNR received the following comments on Chapter 135 modifications, draft 12/10/07.
DNR responses to the comments are indicated below.

Commenter #1

ITEM 4. Amend paragraphs 135.10(4)*"a", "b" and "f*" as follows*:*

a. Pathway completeness. Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)*"j"* and 135.10(2)*"k"; or (3)* the department has determined there is a public water supply well [there will be. Should we be looking at this LUST site in the area??] within a sensitive area.

> DNR response: We agree, as written it's not clear what the spatial relationship the LUST site has to the public water supply (PWS) well. This sentence has been reworded, and the definition of sensitive area has been changed to define 'boundaries' on the well search area.

b. Receptor evaluation. At a minimum, all drinking water and non-drinking water wells located within 1000 feet of the site must be identified. If the leaking underground storage tank site is located within a sensitive area for a public water supply well the Groundwater Ingestions to Drinking Water Well Pathway must be evaluated using the pre ***(effective date of rule)*** Tier 2 software. All other pathways may be evaluated using the post ***(effective date of rule)*** Tier 2 software. The owner or operator, the certified groundwater professional, public water supply operator, or the department may request a [corrective action – recommend delete; no risk assessment, no risk assigned, not to corrective action at this point] meeting to discuss the evaluation of the potential risk to a public water supply well.

> DNR response: We agree. "Corrective action" was deleted.

Also, for Item 5, para e., can the SSTL line language be updated to reflect what is produced by the software?

> DNR response: The word "line" was deleted. The software generates an SSTL for monitoring wells or (sampling) points along this line.

Commenter #2

In general, we believe the proposed rule encompasses the discussion held during the stakeholders meetings. We do have a couple of suggestions that would improve the ability of the Department to protect public water supplies. These comments are noted in red as amendments to the proposed rule.

ITEM 2 Amend paragraphs 135.8 (1) paragraphs "a" and "c" as follows:

a. Tier 1. The purpose of a Tier 1 assessment is to identify sites which do not pose an unreasonable risk to public health and safety or the environment based on limited site data. The objective is to determine maximum concentrations of chemicals of concern at the source of a release(s) in soil and groundwater. If a Tier 1 assessment is required and the department determines the leaking underground storage tank site is located within a sensitive area for a public water supply well, the department will issue a letter notifying the owner or operator that a Tier 2 Site Cleanup Report is required and the pre ***(effective date of rule)*** Tier 2 software must be used to evaluate the risk to the public water supply well. The public water supply well operator will be notified and provided the opportunity to submit any pertinent information to support the additional assessment.

DNR response: This encompasses what was discussed and agreed upon at the stakeholder meeting. The language was added.

ITEM 4. Amend paragraphs 135.10(4)*"a", "b" and "f"* as follows*:*

a. Pathway completeness. Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)*"j"* and 135.10(2)*"k"; or (3)* the department has determined there is a public water supply well or a five-year capture zone for a public drinking water well within a sensitive area.

DNR response: This language has been modified to describe the sensitive area as related to the LUST site. This sentence has been reworded, and the definition of sensitive area has been changed to define 'boundaries' on the well search area to include looking at a 5-yr capture zone.

b. Receptor evaluation. At a minimum, all drinking water and non-drinking water wells and the five-year capture zone for a public drinking water well located within 1000 feet of the site must be identified. If the leaking underground storage tank site is located within a sensitive area for a public water supply well the Groundwater Ingestions to Drinking Water Well Pathway must be evaluated using the pre ***(effective date of rule)*** Tier 2 software. All other pathways may be evaluated using the post ***(effective date of rule)*** Tier 2 software. The owner or operator, the certified groundwater professional, public water supply operator, or the department may request a corrective action meeting to discuss the evaluation of the potential risk to a public water supply well.

> DNR response: This part of the rule describes what the owner and their groundwater professional are required to do for a Tier 1 report submittal. The definition of sensitive area now includes looking at the 5-yr capture zone. The determination of a sensitive area will be made by the department, and likely before the Tier 1 assessment is started. This change in language was not added.

All existing ~~plastic~~ PVC water lines, drinking water wells and non-drinking water wells within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested annually for chemicals of concern. Actual plumes refer to groundwater plumes for all chemicals of concern.

> DNR response: PVC is not the only type of plastic for which petroleum can permeate. The word 'plastic' was retained to account for these other types of plastic (e.g., PB, PE).

Commenter #3

As for transition plan, it seems this is written under the assumption that you have to opt in to the calibrated model. Shouldn't a transition plan assume that all going forward will be the new calibrated version unless someone opts to continue under the old version? It seems the only people who need transition guidance are those that are currently working on a Tier 2, so that they know if one, both or either are acceptable. Otherwise for those that have a completed Tier 2, whether they are in corrective action or deciding on corrective action or monitoring, would be subject by default to the old version because it dictated the SSTLs they are trying to meet. If they chose to remodel at some point then they would have to use the new version and meet the SSTLs for that model.

Although, DNR wouldn't have to, they could provide clarification that anyone who does remodel with the newer version may opt after that modeling to choose one or the other.

Additionally, the way in which DNR has written the "plan" encourages everyone to load DNR down with reports in the short term because it sets short immediate time frames that must be met. For the workflow issues DNR always references wouldn't it make more sense to allow those potential remodels to be spread over time instead of force them all in the first 60 days? Unless a backlog is desired, I would think so.

Lastly, a simple transition can be included in the rule just to address the small group currently working on a T2. Creating a "seperate plan" incorporated by reference into the rule essentially allows DNR to change the rules without any public process.

> DNR response: The transition language was intended to give direction on how to handle 1) sites in the process of preparing assessments and corrective action plans under the old software, and 2) sites for which RBCA assessments have been approved and corrective action/ monitoring is in progress (presumably new sites will proceed under the new version). Notification to the department is necessary in order for us to 1) complete the initial determination of sensitive area and provide direction to the owner/groundwater professional as to whether the old software has to be used on the PWS receptor type, 2) set new compliance schedules as needed, and 3) notify affected PWS operators for their input. Also, for sites that choose to 'stay the course', the transition language is needed to recognize (i.e., not invalidate) the output (SSTLs, CA area) of the old model. Additionally, transition language is needed to clarify that 'flip-flopping' between software versions will not be acceptable.
>
> Our primary concern is for sites that are in the process of preparing a RBCA report or CADR. The transition rule language includes a short notification period (notice prior to expiration of previously established submittal schedule). This was added to ensure these sites proceed and maintain a standard compliance schedule. Sites in progress (monitoring or corrective action) may provide notification at any time (the 1-yr limit was removed from the rule). It is our expectation that sites which do not propose using the new software, will continue with required activities and schedules. Also, it is our expectation that most sites will transition into the new 'more accurate' software, and not drag the decision to do so over several years.
>
> We acknowledge that once the rules are approved, the new software will be available for all sites to use; however, we also recognize there may be sites where corrective action is being conducted to address a high risk condition, known receptor impact or for plume control. Under these conditions the department may require the corrective actions continue (while the re-evaluation is being completed). A provision was added to the transition rule to address this public health, safety concern.
>
> The reference to the transition policy statement was removed.

Commenter #4

I have done a rather quick review and find that the definition of "Sensitive Area" needs to take into account a water systems Capture Zone. A line in the sand distance is not a true measure that can be used everywhere.

> DNR response: The definition of sensitive area has been changed to better define 'boundaries' on the well search area, in relation to the LUST site. It includes capture zone consideration.

Also under Item 4. (135.10(4)) b. I think if the water system has to have control over a 400 ft radius then a plume within that 400 foot needs to be addressed, long before it gets to the 100 ft line. The cone of influence can easily pull from greater distances than 100 ft.

> DNR response: Sampling of wells within 100 feet of the plume has been part of the RBCA evaluation of LUST sites since 1996. However, with these new rules sampling of PWS wells which are in sensitive areas may be completed as part of the Tier 3 assessment or other evaluation of that well's vulnerability.

Commentor #5

Following are comments on the most recent proposed version of the rule, purple is what is proposed, yellow denotes comments, questions, or suggestions:

*c. Tier 3. ……..*The department can request a Tier 3 assessment of risk if the site conditions have not been adequately addressed by the Tier 2 procedures. *The model either does the assessment or it doesn't. If the GWP recommends a T-3 than that is the task to be performed.*

> DNR response: During the last stakeholder meeting, the group suggested limiting the definition of sensitive area to only include highly susceptible and susceptible rankings from the SWP vulnerability classification scheme. The department expressed concern about being limited to this one criterion, but would agree as long as we had some general ability to address conditions that arise (e.g., known receptor impacts) which are not adequately characterized by the Tier 2 evaluation process. This language covers DNR's concern.

General conditions…. if required by departmental correspondence per 135.8(1)a, the public water supply well receptor (suggested *added term*) must be evaluated by the pre (effective date of rule) Tier 2 software.

> DNR response: Agree - we added the term 'receptor'.

a. Pathway completeness….."; *or (3)* the department has determined there is a public water supply well within a sensitive area. *How will that be determined*? *What is the exact screening process?*

DNR response: In response to other comments and in recognition that it wasn't clear how LUST sites/ PWS wells would be screened, the definition of sensitive area has been changed to better define 'boundaries' on the well search area. The definition now includes 5-yr capture zone (or in its absence, 2,500-ft radius). Once a LUST site is identified, the department will complete a well search for the community. The search will be from both the LUST site out (e.g., 1 mile) to check for wells, and if PWS wells are identified, we will check the 5-yr capture zone to determine if the LUST site falls within that area. Next, the department will check the susceptibility ranking for any PWS wells. If a well falls within the 5-yr capture zone, and is considered to be in a susceptible or highly susceptible area, the PWS well would need to be evaluated using the old software.

ITEM 5 Amend paragraphs 135.12 (3) "d" and "e" as follows:

d…….. All existing plastic water lines, (*not agreed to by stakeholders, not a part of the proposed rule nor the reason why the rule is being discussed, why is this being included?*)

DNR response: While we agree this hasn't been the main topic of discussion among stakeholders, sampling of plastic water lines is required as part of the RBCA evaluation (135.10(8)b). For receptors that are classified high risk, sampling of those receptors has been required as part of the interim/ annual monitoring events (see web postings dated 8/2/2000, 1/30/02, and 10/23/02).

Transition policy

The DNR will complete an internal screening process to determine if the LUST site is located within a sensitive area for a public water supply well. *Exactly what is DNR is planning to do in this screening process and what the cutoff determination is for "within."*

See DNR response to previous question on "*a. Pathway completeness*."

RESPONSE 3

- The owner or operator must proceed with the preparation of the CADR or corrective action plan if it is determined by the DNR the contamination poses a significant threat to public health and safety or the environment (e.g., drinking water sources impacted or threatened, fumes in buildings, etc.).
  Should be able to remodel with new software.

DNR response: There may be conditions that require immediate abatement, corrective action or plume control to ensure safety to public health the environment. This statement speaks to the necessity to take action, but may not necessarily mean the new software can't be used in some of these cases. Please note the transition language has been modified. See responses to **Commentor #3**.

The public water supply well operator will be notified a sensitive area for a public water supply well.
What does this mean, a typo?

DNR response: The language has been changed to provide clarity.

RESPONSE 4

- The owner or operator must proceed with the implementation of an approved corrective action if it is determined by the DNR the contamination poses a significant threat to public health and safety or the environment (e.g., drinking water sources impacted or threatened, fumes in buildings, etc.).
  Same as Response#3

  DNR response: See above. Please note the transition language has been modified. See responses to **Commentor #3**. Reference to the policy guidance has been deleted.

RESPONSE 5

- The owner or operator must proceed with the implementation of the corrective action if it is determined by the DNR the contamination poses a significant threat to public health and safety or the environment (e.g., drinking water sources impacted or threatened, fumes in buildings).
  Same as #3 and 4 The term"must" in all 3 of them is problematic.

  DNR response: See above. Please note the transition language has been modified. See responses to **Commentor #3**. Reference to the policy guidance has been deleted.

Commentor #6

1) Transition policy. Suggest changing the word "must" in Conditions 3, 4, and 5, to "may", so as to give people the option of using the new software.

DNR response: See responses to **Commentor #3** and **Commentor #5**. Please note the transition language has been modified. Reference to the policy guidance has been deleted.

2) Under the bullet points for conditions 3 &4, it's noted the Dept. will differentiate between those sites classified high risk that DO and DO NOT pose a significant threat to public health and safety or the environment. Can you elaborate on what high risk receptors / pathways do not pose a

significant risk?

DNR response: See responses to **Commentor #3** and **Commentor #5**. Please note the transition language has been modified. Reference to the policy guidance has been deleted.

The intent of the statement was to address sites for which there are known receptor impacts or imminently threatened receptors (which is a little more difficult to define, but would look at proximity of receptors to plumes). There may be conditions that require immediate abatement, corrective action or plume control to ensure safety to public health the environment. This statement speaks to the necessity to take action, or continue with ongoing remediation.

3) the term "responsible party" used in 135.18(6) should be stricken from the rules, as this term is not defined in Iowa Code 455B.471 or in Chapter 135 of the IAC. or as an alternative, define the term.

DNR response: We agree. The term has been deleted.